purpose of proposing an amendment. The amendment affects Kentucky and no other State. I understand, of course, that this would not be possible unless, after talking to Senator BYRD and Senator WILLIAMS, I find that this procedure is acceptable to the Finance Committee.

The amendment consists of striking out lines 2 and 3 on page 40 of the bill, which specifically add Kentucky to the list of 17 States now authorized to divide their State and local government retirement systems into two parts for purposes of social security coverage.

This provision was contained in the House bill. However, only yesterday, I received word from the president of the Kentucky Education Association, and the board of trustees of the Kentucky Teachers Retirement System, that both State organizations of teachers are strenuously opposed to the provision—which principally affects only teachers in the State of Kentucky.

Because the provision is controversial in Kentucky, and this information was received so late, it would be helpful if it could be considered in conference.

I know this is an unusual request, but perhaps I can talk to you about it and will look for you before the Senate convenes on Tuesday.

Sincerely yours,

JOHN SHERMAN COOPER.

SEPTEMBER 4, 1964.

Hon. RUSSELL B. LONG,
U.S. Senate, Washington, D.C.

DEAR RUSSELL: The social security bill as passed in the Senate yesterday contains a provision in new section 109, specifically adding Kentucky to the list of 17 States now authorized to divide their State and local government retirement systems into two parts for purposes of social security coverage.

This provision was contained in the House bill. However, only yesterday, I received word from the president of the Kentucky Education Association, and the Board of Trustees of the Kentucky Teachers Retirement System, that both State organizations of teachers are strenuously opposed to the provision.

Since the matter has turned out to be controversial, principally affects teachers in Kentucky whose organizations oppose the provision, and affects no other State, it would be helpful if it could be considered in conference. But, this will not be possible unless we could secure unanimous consent when the Senate convenes on Tuesday to reconsider the final vote for the express and limited purpose of asking that lines 2 and 3 on page 40 be stricken from the bill.

I know this is an unusual request. But, if you have no objection and could accept the amendment, it would be very helpful and I am sure could be disposed of quickly.

I would like very much to talk to you about this and will try to see you when the Senate convenes on Tuesday.

Sincerely yours,

JOHN SHERMAN COOPER.

JOHN SHERMAN COOPER,
U.S. Senator,
Capitol, Washington, D.C.:

Board of trustees, Kentucky Teachers' Retirement System strongly oppose section 12 of H.R. 11865. Teacher retirement contribution increases to 7 percent of salary July 1965. Addition of social security at approximately 5 percent too great a burden for teacher and taxpayer. Studies show 50 percent Kentucky teachers are married women with social security coverage through husband. Enactment of this legislation means eventual weakening of one of strongest retirement programs in Nation. Original proposal as sponsored by Congressman Snyder came from small group of older teachers in Louisville who are interested in windfall. Twenty-five school districts would be required to raise local property tax rate beyond present legal limit to pay employers portion of tax. Cost in Pulaski County 20 cents of $1.50 rate. Laurel County would need 21 cents beyond the legal $1.50 rate. Strongly urge every effort to delete this provision.

JAMES L. SUBLETT,
Executive Secretary, Teachers' Retirement System of State of Kentucky.

Senator JOHN SHERMAN COOPER,
Senate Office Building,
Washington, D.C.:

For a number of years the Kentucky Education Association has been opposed to combining Kentucky Teachers' Retirement System with any other retirement plan, including social security. As late as 1963 the KEA delegate assembly composed of 600 teachers from throughout Kentucky reaffirmed its position as follows: "We reaffirm the position taken by KEA in keeping the Kentucky retirement system actuarially sound in preference to supplmentary coverage from other sources."

ROGER H. JONES,
President, Kentucky Education Association.

Mr. COOPER. Briefly, the bill as passed by the House and sent to the Senate contained a provision adding the States of Alaska and Kentucky to the list of 17 States now authorized to divide their State and local government retirement systems into two parts, for purposes of social security coverage.

When I received word that this provision might not be desired by the majority of teachers in Kentucky, I did send a telegram to Mr. Sublett and to Mr. Jones on Wednesday, September 2. But, as the letters explain, I did not receive their response until after the Senate had acted upon the entire bill. Although I had received no advice on this subject from the two organizations earlier, because of their opposition, I thought it would be helpful to have the provision considered in conference.

I appreciate very much the courtesy of the majority leader in taking the unusual action of securing a Senate order requesting that the House of Representatives return the bill to the Senate, so that I might have the opportunity of making a unanimous-consent request to remove the Kentucky provision from the Senate bill, so that it could be considered in conference between the two Houses. I understand that when the order of the Senate was received by the Secretary of the Senate, the House of Representatives had already adjourned until Thursday, September 10, so that it was impossible for this to be done.

I know that the authority granted by the provision in the bill is permissive; that before it could be put into effect, enabling legislation by the Kentucky General Assembly would probably be required; that the teachers' retirement system could not be divided unless the State decided to do so; and, finally, that if the State did so decide, the question would be submitted to State and local groups of teachers, for their decision by referendum or as individuals. So I do not think any action can be taken against the wishes of the majority of the teachers in Kentucky, who now have their own retirement system.

I know that my colleague from Kentucky [Mr. MORTON], who is a member of the Finance Committee, also tried to correct this provision, and, I am sure, joins in expressing to the majority leader our thanks for his extraordinary action in helping to explore every possibility of carrying out the wishes of the teacher organizations of our State.

Bill Cooper

AMENDMENT OF FOREIGN ASSISTANCE ACT OF 1961

The Senate resumed the consideration of the bill (H.R. 11380) to amend further the Foreign Assistance Act of 1961, as amended, and for other purposes—cloture mention.

Mr. HART. Mr. President, those of us who are attempting to bring the Senate to a fuller understanding of the implications of the very real dangers that are inherent in the effort, in effect, to overrule the decision of the Supreme Court on reapportionment of State legislatures have been encouraged greatly by the growing support across the country for our efforts.

Earlier today we made the point that we feel it is not a flattering commentary that the Senate continues to consider this complex and far-reaching proposal without the benefit of a single page of hearings, or a day of consideration by a standing committee of the Senate.

We are approaching the time when the roll will be called on cloture, the effort to terminate the Senate debate. In this setting, it seems important that this RECORD show some of the opposition which has developed to the Dirksen amendment in many of the States where fair-apportionment groups have long been carrying on the struggle to achieve constitutional representation in the State legislatures.

Mr. President, in order that there may be some indication available of the concern that is expressed, I shall read into the RECORD some of the communications which, as one Senator who has been attempting to get the facts before the Senate and the public, I have received recently.

As early as June 23, the League of Women Voters of Oklahoma, more vigilant than most of us, issued the following statement in opposition to measures which would restrict the jurisdiction of the Supreme Court in State reapportionment cases:

STATEMENT, LEAGUE OF WOMEN VOTERS OF OKLAHOMA, JUNE 23, 1964

The bloc of Congressmen now contemplating an amendment to the U.S. Constitution to prevent the U.S. Supreme Court from ruling on cases of apportionment of State legislatures is threatening the balance of powers on which our Government is based. The Constitution provides guards for individual rights and individual liberties. To restrict the Supreme Court by constitutional amendment and to deny recourse to minorities and individuals whose rights may be threatened weakens the fabric of our form of government.

Congress has a way right now to override the Supreme Court, and it has used it in the past. After the Supreme Court declared a Federal income tax unconstitutional, Congress passed by a two-thirds vote an amendment which was ratified in 1913 by three-

fourths of the States, the 16th amendment, which granted Congress the power to tax incomes.

If two-thirds of the Congressmen feel the decisions of the Court in the case of reapportionment of State legislatures are too far-reaching, let them attempt a remedy by trying to solve the problem of unrepresentative State governments, not by destroying the only recourse left to the underrepresented. Let them draft a positive amendment, not an amendment designed to destroy the checks and balances.

On August 31, an emergency committee of 175 civic leaders and interested citizens met in Oklahoma City in support of fair apportionment and in opposition to measures pending before the Congress to overturn the Supreme Court's decision. The meeting was chaired by the distinguished mayor of Oklahoma City, the Honorable George H. Shirk.

Following are two resolutions adopted by this meeting, articles which subsequently appeared in the Oklahoma City Times and the Daily Oklahoman, and an editorial which appeared in the Oklahoma Journal:

RESOLUTION I

Whereas the Supreme Court of the United States has held that under the U.S. Constitution all citizens of each State are entitled to equal and fair representation in their State legislatures; and

Whereas a special three-judge U.S. district court in Oklahoma City, Okla., has decreed that the Legislature of Oklahoma must be reapportioned to give each citizen, regardless of the place of his residence, an equal voice in the selection of the lawmakers of this State; and

Whereas such constitutional rights for certain citizens have long been denied by the failure of the State legislature to reapportion itself according to the constitution of Oklahoma, as well as the U.S. Constitution; and

Whereas there is pending in Congress certain legislation which has as its purpose the delay and ultimate defeat of the rights of all citizens to fair and equal representation; and such legislation, known as the Tuck bill and the Dirksen-Mansfield amendment, is incompatible with the American sense of fair play and represents an attack upon the ideal of equal representation of all citizens in their State legislatures: Now, therefore, we, the undersigned, do hereby

Resolve, That the Tuck bill and the Dirksen-Mansfield amendment should be defeated so that all citizens may be secure in their constitutional rights and just representation in the State legislatures.

And we further resolve that copies of the foregoing resolution be sent, together with such names that are subscribed thereto, to our representatives in the Congress of the United States.

RESOLUTION III

Whereas the specially constituted Federal district court hearing the Oklahoma legislative reapportionment cases has had its prior decision affirmed on appeal by the U.S. Supreme Court, and such decision required equal representation in both houses of the Oklahoma Legislature; and

Whereas prior to entering its decree, the Federal district court repeatedly emphasized the solemn duty of the legislators to reapportion the Oklahoma Legislature and the court withheld its order of judicial reapportionment until after the 1964 session of the legislature refused to pass reapportionment legislation which would be consistent with the Constitution of Oklahoma and of the United States; and

Whereas there have been scurrilous attacks upon the Federal court, which court courageously performed its judicial duty under the concept that this is a nation whose principles are based on a rule of law, and all persons are bound by such rule of law: Now, therefore, we do hereby

Resolve and hope, That Oklahomans will accept the final decision of the courts which secures equal representation to all of our citizens, regardless of place of residence, and will refrain from any further actions which would tend to lessen our respect for judicial decisions or which would divide Oklahomans to the detriment of our great State.

We do also hope that all fair-minded Oklahomans share our belief that the obtaining of equal legislative representation for all of our citizens is a victory for all citizens and a defeat for none, and that all sections of our State shall together move forward in harmony and mutual respect to the end that our State may benefit therefrom.

[From the Oklahoma City (Okla.) Times, Sept. 1, 1964]

APPORTION SUPPORT

A convincing demonstration of local support for fair reapportionment and concern over threats to it was given by the large attendance at the Monday luncheon of the Emergency Committee for Reapportionment.

Although the luncheon was held on short notice to beat efforts in Congress to cripple reapportionment, more than 170 persons crowded into the session to show support for the cause. Resolutions and petitions to be forwarded to Congress and to our city council were signed by those present.

The hearty applause given as the chairman, Mayor Shirk, introduced such longtime toilers in the reapportionment vineyard as Attorneys Norman Reynolds, Del Stagner, Sid White, and Jack Hewett, and Mrs. Trimble Latting demonstrated Oklahoma City's backing. Mrs. Latting recently was designated by the three-judge Federal court to draw the reapportionment map under which the September 29 elections will be held.

Beyond that the crowd was briefed on the threats to reapportionment under bills now in Congress. These are the Tuck bill which in effect would kill reapportionment, and the Dirksen amendment which would delay it for 16 months.

V. P. Crowe, prominent Oklahoma City attorney who was keynoter for the meeting, pointed out that the latter was a device by which a constitutional amendment to take reapportionment out of the hands of the Federal courts could be rushed through the presently malapportioned legislatures of the States before reapportionment can take place.

Crowe said that a constitutional issue even greater than reapportionment itself was involved here. That is the question of whether Congress just becauase it doesn't happen to like a Federal court ruling can pass legislation to take the entire matter out of the hands of the courts. He said the Tuck and Dirksen bills would be nothing less than passing laws to take away from the Supreme Court the right to interpret the Constitution—a right fundamental to our system since the earliest day of the Republic.

Particularly in relation to reapportionment, Crowe said, "the right to vote in our society is too important to be stripped of judicial protection."

Reynolds gave a history of the long fight for reapportionment in Oklahoma and stressed that it is "just bunk" to say the courts are acting hastily here.

Those at the meeting agreed to wire or write Senators MONRONEY and EDMONDSON opposing the Tuck and Dirksen measures. Other citizens of Oklahoma County also can help the cause by doing likewise (c-o Senate Office Building, Washington 25, D.C.).

[From the Oklahoma Journal, Sept. 1, 1964]

VOTER NEEDS PROTECTION

"Sired by expediency and born from the womb of politics."

That is the description given Monday to the Dirksen amendment to the Tuck bill.

A crowd numbering almost 200 greeted the expression with approbation at a downtown hotel.

They were members of the emergency committee for reapportionment meeting to muster forces in opposition of last-ditch efforts of malapportionment forces to deny the individual his voting rights.

V. P. Crowe, a longtime foe of malapportionment, rang the bell when he declared, "I haven't heard the people complain about reapportionment—it's the politician—the fellow in office."

He pointed out that the Dirksen amendment is aimed at buying time so malapportionment forces can launch further legislation to perpetuate a system the courts have declared to be unconstitutional.

The question naturally comes to mind, Who is the final arbiter in matters dealing with the Constitution—the Supreme Court or Congress?

It was made amply clear at Monday's meeting the individual's right to vote is direly in need of judicial protection in America.

[From the Daily Oklahoman, Sept. 1, 1964]

COMMITTEE URGES VETO OF TUCK BILL

The "emergency committee for reapportionment" Monday launched an attack against pending legislation in the U.S. Senate aimed at stalling Federal court reapportionment orders.

By resolution, the committee urged defeat of the Tuck bill, authored by Representative WILLIAM TUCK, Democrat, of Virginia, and an amendment to the foreign aid bill proposed by Senator EVERETT DIRKSEN, Republican, of Illinois.

The Tuck bill, which passed August 16 in the House, would take reapportionment out of the hands of the Federal courts.

"FREEZE" SOUGHT

The Dirksen amendment would "freeze" all reapportionment under court orders until January 1, 1966.

Copies of the resolution, along with the signatures of about 200 persons attending Monday's meeting, will be sent to members of Oklahoma's congressional delegation. Senator MIKE MONRONEY has said he is in favor of the Dirksen amendment.

The committee also asked the City Council of Oklahoma City to reaffirm its stand on legislative reapportionment. The council has previously passed a strong resolution favoring reapportionment of the State legislature.

VIEWS GIVEN

V. P. Crowe, attorney, told the emergency committee that the Dirksen amendment supposedly would give various State legislatures time to comply with constitutional apportionment provisions.

However, he said, the general supposition is that the amendment's purpose is to give the present malapportioned legislatures time to pass a constitutional amendment to take reapportionment out of the hands of the Federal courts.

This would require approval by 38 legislatures.

Crowe said Congress is invading the right of the U.S. Supreme Court to interpret the Constitution, and asserted that is a more important issue even than reapportionment.

MOVE CALLED THREAT

"It is a threat to the people of this country for the Congress to tell the U.S. Supreme Court how to rule on constitutional questions," he said.

Quoting the High Tribunal itself, Crowe asserted: "The right to vote in this country

is too important to strip of judicial protection."

Mayor Shirk, who heads the committee, introduced several persons who have worked actively for reapportionment. They included Norman Reynolds, Del Stagner, Sid White, Jack Hewett and Mrs. Trimble Latting.

Reynolds traced events in the reapportionment controversy, starting back in 1946.

He said the legislature has had plenty of time to reapportion itself, but hasn't and never would.

Those in Georgia who have been working long years for fair apportionment stand opposed to the Dirksen amendment. Following is a letter I have received from Mr. Alva W. Stewart, of Atlanta, Ga., and a statement by Mr. Israel Katz, of Atlanta, counsel for plaintiffs in the pending Georgia legislative reapportionment case, Toombs against Fortson:

ATLANTA, GA.,
August 29, 1964.

Hon. PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: As a State correspondent of the National Civic Review and an ardent supporter of the National Municipal League, I wish to go on record as endorsing the June 1964 decision of the U.S. Supreme Court relating to apportionment of State legislatures.

This decision is long overdue and will contribute materially toward giving residents of urban areas throughout the Nation the representation to which they are entitled in their State legislatures. The "one man, one vote" doctrine enunciated by the Court in this decision is a logical corollary of the Court's ruling in *Baker* v. *Carr* (Mar. 1962).

The Federal analogy argument which has been used frequently by so many critics of the Court's decision is not valid for the obvious reason that the cities and counties do not bear the same relationship to the State government as the 50 States bear to the National Government. Our States still possess some degree of sovereignty; our counties and municipalities have never, and do not now, possess this attribute.

For too long a time many of our State legislators have been representing pigs, chickens, and trees rather than people. The representation of nonhuman constituents may have some advantages to the lawmakers, but such representation is patently unfair if it is done at the expense of men and women who are deprived of representation on the State level. As any impartial observer of State government in recent years will admit, thousands of urban residents in almost every State have been deprived of adequate representation in their State legislative bodies.

Like many other Americans, I would rather see these inequities in representation reduced or eliminated by State legislatures instead of the Supreme Court. However, if the legislatures failed to discharge their constitutional mandate to reapportion themselves periodically, I believe the Court is fully justified in ordering reapportionment based entirely upon population.

I hope you will continue your efforts to support the Court's ruling and to oppose the Dirksen proposal or any other proposal which would have the effect of either nullifying or delaying the Court's decision. You can be assured that thousands of students of municipal and State government stand behind you and your Senate colleagues who are exerting their efforts toward defeating the Dirksen proposal.

Sincerely yours,

ALVA W. STEWART.

STATEMENT ON LEGISLATIVE APPORTIONMENT

There was a time in Georgia prior to the *Baker* v. *Carr* decision, when our Georgia House of Representatives controlled by constituencies representing 22 percent of the people, would adopt very regressive legislation. These bills in turn would go over to our State senate, wherein a majority then controlled by constituencies representing approximately 5 percent of the people, would alter such regressive legislation to make it even more regressive. The final bill would then be passed on to our Governor, elected under a county-unit system from constituencies representing 22 percent of the people, whereupon the bill would be signed into law.

Thanks to the Supreme Court decisions in *Baker* v. *Carr* and *Sanders* v. *Gray*, we do not have quite that situation in Georgia today. Yet our house where all revenue and appropriation bills must originate, is still controlled by constituencies containing 22 percent or less of the population of Georgia. Of course, only a majority vote in those constituencies are necessary to elect their representatives, so that it is entirely possible that slightly over 11 percent of the people have the final say-so in the selection of the majority of the representatives to the lower house of the Georgia General Assembly. In January of 1965, our general assembly, so malapportioned, will adopt a $1 billion appropriations bill. The power to tax and spend is of the essence of government, yet the majority of the people have little effective representation in this regard. I am enclosing a self-explanatory affidavit, submitted in *Toombs* v. *Fortson*, the Georgia reapportionment case, which affidavit and table attached gives an idea of the way that a malapportioned legislature avoids meeting the fiscal needs of the people in the more populous areas. Little wonder that we have to increasingly call on Washington to meet unfulfilled needs.

In Georgia, we have the amazing spectacle of our population based body, the Georgia senate, constantly caving in on matters of basic principle, and acquiescing in the position of the lower house, even where the general welfare is diametrically opposed, and where the position of the senate has been diametrically opposed.

For instance, our Georgia senate at its last session, although owing its very existence to the Supreme Court decision in *Baker* v. *Carr*, went along with a house resolution denouncing the U.S. Supreme Court for ruling in apportionment cases. Why? Several of the senators when questioned about their vote, said simply that "We have to work with the lower house, you know, and we thought it would make them feel better, and appreciate that we were friendly to them, if we went along with that resolution." Others more honestly pointed out that their senatorial districts, since becoming based on population, embraced 8, 10, or 12 of the old rural representative districts, not yet reapportioned, and that to adopt any position opposed to that many lower house representatives, was certain to mean stern and swift political reprisal, and probably political death. Although there should only be two, three or at the outside four representative districts in any Georgia senatorial district, based on a population, this goal has not yet been obtained, and the political reality is as stated.

Although the State senate almost unanimously felt that the State school superintendent should be appointed, so as to free this office from political pressures that make it difficult to get the best qualified man, the senate flip-flopped and voted 43 to 9 to have the State school superintendent elected, because this was the position of the rurally dominated lower house. Although the State senate had virtually unanimously voted 2-year terms for the house, and 4-year terms for the senate, the State senate acquiesced that the house would also have 4-year terms because otherwise no legislation could be passed through the lower house. These illustrations could be repeated ad infinitum, and recounted perhaps best by members of the general assembly, who as a practical matter know that you do not have popular based government, where one of the two bodies is thoroughly malapportioned.

For Congress to be so irresponsible as to favor legislation that would permit one of the two houses of the general assembly to be on any basis, however, unrepresentative of the population, is a complete abdication of duty. What this would mean is that the States of this great Nation, would never realize full potential, and harness their full resources in a modern world.

It would also mean that areas wherein States could operate and administer services in a responsible manner, would be circumscribed indeed, and a continuing need for Federal supervision and administration would continue and increase. Those who are truly in favor of local self-government, could not be against letting the majority of a people in a particular State, govern their own destinies. Certainly in a homogeneous type society as that found in Georgia, there is no reason to view the 159 counties as little sovereignties, that need protection against one another, in the same manner that the Thirteen Original States of the Federal Constitution felt that they needed protection, thus resulting in the great compromise over the makeup of the U.S. Senate. It is simply an absurdity propounded, in order to keep an inordinate amount of power into the hands of a discouragingly small percentage of the population. Primarily it is expressed by those who really do not believe in self-government, but who simply want to retain power.

We have had a long fight in Georgia for true representative government, and are on the threshhold of obtaining that type of government for the first time in a hundred years. Our three-judge Federal court has recently ruled that the lower house of the general assembly must reapportion itself in time for the 1966 elections, and that special elections must be held prior to 1966 to insure that a representative lower house takes office at that time. To have the Congress of the United States frustrate this struggle for democracy, is almost beyond what one can bear.

I have no political ambitions, but I entreat the Members of Congress to disdain this last gasp attack on democracy, and instead to support the U.S. Supreme Court, rather than destroy it.

ISRAEL KATZ,
Former President of Active Voters of Georgia, and Counsel for Plaintiffs in Georgia Legislative Reapportionment Case, Toombs v. Fortson, Now Pending.

Following is a statement made before the House Judiciary Committee by Mr. Eugene H. Nickerson, county executive of Nassau County, N.Y.:

AUGUST 12, 1964.

STATEMENT OF EUGENE H. NICKERSON OPPOSING PROPOSALS TO STAY REAPPORTIONMENT BY CONGRESSIONAL ACTION

I am county executive of Nassau County, the most populated county in New York State outside of the city of New York, and a party to the New York reapportionment case now pending in the District Court for the Eastern District of New York. I strongly urge the defeat of the present proposal to frustrate the right of the 1,400,000 citizens of Nassau County and millions of other citi-

zens throughout our State to reapportionment of New York's State Legislature on a constitutional basis.

The New York case, *WMCA* v. *Lomenzo*, was commenced more than 3 years ago, in May of 1961. It has been before the U.S. Supreme Court twice on appeal. The three-judge statutory U.S. District Court for the Southern District of New York has held extensive hearings on the matter both before and after the June 15 decision of the U.S. Supreme Court; hundreds of pages of testimony and scores of exhibits were before that Court.

Republican State officials have used every device possible to delay reapportionment despite the clear ruling of the U.S. Supreme Court that our present New York Legislature and scheme of apportionment was unconstitutional. They have created synthetic difficulties and shouted "impossibility" and "impracticability" although in just a few days in Nassau County attorney's office under my direction and the New York City corporation counsel's office drew maps and devised a full timetable for immediate reapportionment and constitutional elections in November of this year. Although we pressed for immediate reapportionment, the Federal statutory district court has, in what we consider to be extreme deference to sensibilities of State officials, decided not to interfere with elections to be held in November of this year and to permit the present malapportioned legislature to sit for yet another year.

Now it is proposed to deny the individual constitutional rights of our citizens still longer by closing the Federal courts to them, as Senator DIRKSEN proposes, or by suggesting further delay as is proposed in a "compromise" reported in yesterday's New York Times permitting, but not requiring, stays in the Federal courts. Amendment No. 1191, attached to bill H.R. 11380, amends title 28 of the United States Code by requiring a stay "until the end of the second regular session of the legislature" of the State. This means a further denial of our rights for from 2 years until eternity.

I address myself to what I shall refer to as the Dirksen proposal for a mandatory stay. The so-called compromise providing for permissive stays is not as objectionable but it serves no useful purpose. In the first place, as I have already pointed out, the courts already have this power and they have exercised it in New York and elsewhere to deny immediate reapportionment. In the second place, it would constitute an unseemly interference by the Congress in pending litigations in favor of State officials acting unconstitutionally and against individuals whose rights are currently being violated.

The points I would like to make are two. The first is that, any interference by Congress at this stage of these litigations would unfairly deprive millions of citizens of both New York State and the Nation of constitutional rights which they are legally and morally entitled to as of now. The second is that any proposal, such as that of Senator DIRKSEN, derogating from the jurisdiction of the Federal courts, must be condemned as contrary to basic American constitutional principles of judicial review and separation of powers. It strikes at the heart of our traditional process of constitutional adjudication.

We in Nassau County are particularly concerned because it is our residents who are the most discriminated against in the matter of legislative representation of any county in the State of New York. In this respect our plight typifies that of suburban communities throughout the country. While not wishing to regale you gentlemen by a parade of horrible examples, I think a few illustrations of the unfair handicap placed upon us in the State of New York would be helpful in your comprehending why we, in Nassau County, feel so strongly about this matter.

The least populous assembly district in the State is Schuyler County with a citizen population of 14,974. The average assembly district in Nassau County has a citizen population of 212,634—almost 15 times the population of the State's least populous district. The largest assembly district in our county has a citizen population of 314,721—21 times the population of the assembly district composed of Schuyler County.

In the State senate each Nassau County senator represents 2½ times the population of the least populous senate district. Our neighboring Long Island county of Suffolk is disadvantaged even more than we in its representation in the senate. Its single senator represents 650,112 citizens—nearly four times that of the least populous district.

It is thus obvious, as the Supreme Court has found, that the constitutional rights of the people of Nassau County and the State of New York are presently being violated.

What is involved is not only the precious right to vote and the right to equal representation but the protection of the social and economic well-being of the people of our county our State and this country who are presently seriously underrepresented.

We in Nassau County are continually suffering from our lack of equal representation. The denial of proper voting rights to Nassau County residents results in unfair tax burdens being placed on them, in inadequate distribution of funds for education and other important municipal services, such as police, sewage, and transportation required in densely populated suburban areas, and in a failure of the legislature to enact legislation vital to the well-being of Nassau County.

New York State is presently under court order to reapportion by April 1965 in time to hold elections for a constitutionally apportioned legislature in November 1965. With equal and constitutional representation at long last within the grasp of our citizens, it seems anomalous to suspend such action while the political forces, which for so long have unfairly dominated the legislatures of New York and other States, make a desperate last-ditch attempt to protect the rotten borough system they have used to make a mockery of our democratic system of equal voting rights. Gentlemen, it is time, I submit, for all tampering with the votes of American citizens to cease. One test should guide us: "one man—one vote."

The U.S. Supreme Court has determined what is a constitutional apportionment. I have always understood that the Constitution, as interpreted by the Supreme Court, could only be altered by constitutional amendment. Now, however, the attempt is being made by simple act of Congress to forbid citizens to exercise their constitutional rights for a period of at least 2 years. Constitutional rights cannot be so toyed with.

We in New York must now wait 1 more year for a constitutional legislature. To require us to wait longer is unfair, unwarranted—and a betrayal of our constitutional rights.

The Dirksen proposal would have the effect of denying Federal courts original jurisdiction to hear reapportionment cases for a period of time and would also deny the Supreme Court the right to review decisions of the highest State courts in reapportionment cases.

While it would not, theoretically, prevent an application for relief to the State courts, the proponents undoubtedly hope that State courts would not act while the Federal courts were stayed. In view of the supremacy clause of the Constitution, however, it is difficult to see how any State court could refrain from enforcing the U.S. constitutional right to equal apportionment were actions brought in State courts. Denying Federal jurisdiction in these cases would be, therefore, a first sledge hammer blow calculated to cause our Constitution to crumble into 50 separate little constitutions. The Constitution of the United States has endured for almost 175 years—it is, as you know, the world's oldest continuous and operative Constitution. This Nation has always—with one tragic exception, 100 years ago—believed that the Constitution must be finally interpreted by one voice and one voice only. No federal system could exist with each of its component parts deciding for itself what its basic and common constitutional duties and responsibilities mean.

We have long found it far better to adhere to the interpretation of the Constitution by the Supreme Court of the United States rather than to allow it to be interpreted finally by each of the States. This function of judicial review was perhaps best summed up by Mr. Justice Story in the 1816 Supreme Court case of *Martin* v. *Hunter's Lessee*, 1 Wheaton 304, 348, where he stated: "A motive * * * perfectly compatible with the most sincere respect for State tribunals might induce the grant of appellate power over their decisions. That motive is the importance, and even necessity of uniformity of decisions throughout the whole United States, upon all subjects within the purview of the Constitution. Judges of equal learning and integrity, in different States, might differently interpret a statute, or a treaty of the United States, or even the Constitution itself; if there were no revising authority to control these jarring and discordant judgments, and harmonize them into uniformity, the laws, the treaties, and the Constitution of the United States would be different in different States, and might, perhaps, never have precisely the same construction, obligation, or efficacy, in any two States."

While I have no intention of making any jurisprudential statement on the Constitution, as a lawyer, who had the high privilege and honor of serving as law clerk to the Chief Justice of the United States, Harlan F. Stone, I feel obliged to say a few words concerning ex parte McCardle, a decision upon which so much reliance is being put. Few legal historians would today justify as sound the statute which deprived the Supreme Court of its appellate powers in cases arising out of Reconstruction measures.

Indeed, only recently did Mr. Justice Douglas remark that "There is a serious question whether the McCardle case could command a majority view today" *Glidden Co.* v. *Idanok*, 370 U.S. 530, 605 (1962) (dissenting opinion).

When it seemed that the Supreme Court would hold invalid some of those harsh and restrictive measures adopted during Reconstruction following the Civil War, Congress limited the power of the Supreme Court. Looking back with the wisdom of 100 years of experience, it is clear that the Supreme Court should not have been muzzled. A free Supreme Court might have corrected abuses and avoided the backlash of unjust repressions of the Negro which has resulted in so many of the race problems which plague us today.

It must be noted that even the doubtful authority of the McCardle case gives no support to the abrogation of Federal jurisdiction to protect the constitutional rights of individuals. That case only involved a limitation on the appellate jurisdiction of the Supreme Court to hear appeals in certain cases decided in lower Federal courts.

The exercise by Congress of its control over Federal jurisdiction must be subject to compliance with the 5th and 14th amendments. Power to control the jurisdiction of the Federal courts must not be so exercised as to deprive any person of life, liberty, or prop-

erty without due process of law or equal protection under the laws.

Interference by Congress in specific pending cases violates the spirit of article III of the Constitution, vesting "The judicial power of the United States in the Federal courts." The "judicial power," section 2 of article III provides, "shall extend to all cases, in law and equity, arising under this Constitution." The reapportionment cases arise, as you know, under the "equal protection of the laws" clause of the 14th amendment. Thus, the Dirksen proposal, in addition to being unsound, may well be itself unconstitutional.

I urge you gentlemen to remember that the Supreme Court has always been one of the three pillars of our Government. At one time or another liberals have thought it would destroy this Nation, conservatives have thought it would destroy us, labor and business have each condemned it, but all have subsequently recognized that they were wrong and that their liberty and well-being required this great Court to remain free.

We need only cast our thoughts back less than 30 years to recall another era when the Supreme Court was being challenged—then on the ground that it was too conservative. Some of those who then spoke passionately against President Roosevelt's "court packing" bill now urge a "court hamstringing" bill even more corrosive of our constitutional scheme of government. To limit and destroy the power of the Federal courts to protect individual constitutional rights strikes at the heart of the Constitution itself.

This country's theory of freedom and individual rights is under attack both at home and abroad. Now, more than at any time before in our history, we must stand firm and protect our constitutional heritage, our concept of individual right under law. The issue is of transcendental important. Do not, I urge you gentlemen, permit the pique of the moment, or the disagreement of some with a particular decision of the Supreme Court, to furnish the excuse for tearing down the constitutional structure which shelters us all.

Here is a statement on the reapportionment situation in Vermont by Mr. John H. Downs, an attorney in St. Johnsbury, Vt.:

STATEMENT OF JOHN H. DOWNS ABOUT REAPPORTIONMENT IN VERMONT

A Federal three-judge court has ruled that the Vermont Legislature must be reapportioned. Particular attention is directed to the house, a majority of its 246 members, each of whom represents 1 town, being elected by 11 percent of the voters. Such a directive has been long overdue.

The court has given Vermont until April 1, 1965, in which to complete the task. Vermonters have tackled more difficult tasks and solved them in less time.

As a member of the house of representatives since 1961, and chairman of the house ways and means committee in 1963–64, I am satisfied that the job of reapportionment can be done and will be completed promptly so long as it continues to be legally necessary for it to be accomplished.

I oppose Senator DIRKSEN's amendment and any legislative attempt to delay the implementation of the court order, or otherwise to affect the Supreme Court's jurisdiction. I do not agree with Senator AIKEN when he suggests that reapportionment cannot be achieved within the time limit of the present court order.

Most Vermonters who suggest that more time is needed—and I do not include Senator AIKEN among those—desire delay for the sole reason that they hope the passage of time will make any reapportionment unnecessary.

In Vermont there is no compelling reason why the vote of a citizen of our smallest town should have any greater or less weight than the vote of a citizen of our largest city. Vermont is a small State and we are a closely knit people, with proper regard and consideration for the rights of each other. We act expeditiously, even though it hurts, when the necessary goal is clearly indicated.

I hope the U.S. Congress will resist all legislative measures which will delay Vermonters in getting on with the task at hand.

The following is a statement by the League of Women Voters of Oregon in support of one-man, one-vote apportionment for their State legislature:

STATEMENT OF THE LEAGUE OF WOMEN VOTERS OF OREGON

In the November 6, 1962, general election, the League of Women Voters of Oregon opposed an amendment to the constitution which read as a ballot title: "Legislative Apportionment Constitutional Amendment—Purpose: Changes Legislative Apportionment Formula—Creates 30 Permanent Representative Districts—Permits Enlargement of Senate to 35—Enlarges House to 65 or More—Provides for Enforcement."

The league opposes freezing into the constitution fixed representative districts. The "permanent districting plan" would set into the constitution 30 representative districts guaranteed of one representative regardless of population; and would make further provision for 35 additional representatives to be allotted on a population basis; with no constitutional limit set on the size of the house.

Because there will always be fluctuation in the population, the league believes that the mechanics of establishing districts should be statutory and not frozen into the constitution. It opposes guaranteeing representation to a district without regard to population. A major premise in the league stand is that a legislator can represent only people, not geography.

The league's opposition to the area reapportionment plan is based on a position reached in 1952 after 3 years' study of reapportionment.

In 1952 the league cosponsored with the Young Democrats and Young Republicans the initiative petition that became the amendment enforcing reapportionment. The 1952 amendment brought about the first reapportionment in 41 years by requiring reapportionment every 10 years; and enabling appeal to the State supreme court by electors whose degree of representation was so small to be unconstitutional. The judicial review clause of the amendment was used in 1961 when petitioners to the Supreme Court challenged the constitutionality of the 1961 legislature's reapportionment. The appeal was successful, and the Court ordered another plan drawn up by the secretary of state.

There was an effort in the 1957 session to change the method of apportionment adding five representatives and allowing each county at least one. The league opposed the change. Similar proposals have come up repeatedly in the legislature; all of which the league has acted against.

The League of Women Voters of Oregon has as its continuing responsibility the support of apportionment of the legislature on the basis of population.

I have received the following letter from Mr. David Friedland, of Friedland, Schneider & Friedland, Jersey City, N.J., who represents the plaintiffs in the pending New Jersey legislative reapportionment suit:

AUGUST 24, 1964.

Senator PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: I represent the plaintiffs in the suit which has been brought to reapportion the New Jersey Legislature and which has been pending in our State court for approximately 2 years.

I know that you are actively engaged in the battle designed to perserve our constitutional freedoms. I hope that you will understand that it is out of a desire to preserve the integrity of the Supreme Court and to affirmatively secure the establishment of equal voting rights for New Jersey residents, that I address this letter to you. If you desire, you may include these remarks in the CONGRESSIONAL RECORD.

In New Jersey a minority of the people have always been able to control both houses of our State legislature. Presently only 19 percent of the people can elect a majority of the senate, while 46.5 percent of our people can elect a majority of our assembly. The system as applied over the years has resulted in a financial stranglehold on the cities and other areas of major population concentration. All pleas for aid to our cities go unheeded, while measures which favor a minority of the people are passed with ease.

There is no impediment to immediate change in New Jersey. The Supreme Court decision in Reynolds can be implemented immediately without undue haste. In an effort to show that reapportionment could be accomplished in a fair and impartial manner, we solicited the services of the Electronic Business Services Corp. and they prepared several impartial reapportionment plans incorporating the population principle. Numerous plans can be achieved by resort to modern science literally overnight. These plans could be put into full force and effect within a few months. We do not have primary elections in the State of New Jersey until April of 1965. Implementation of the Supreme Court decision would, therefore, not disrupt the electoral process in the State of New Jersey. I have included a copy of our brief which I hope you will read and include as part of my remarks on this matter.

I am quite concerned that the passage of the Dirksen legislation might result in a delay of the effectuation of our constitutional rights. I understand, in fact, that there is no pretense about the legislation. Its declared purpose is to secure a delay of the implementation of federally protected constitutional rights. The delay is sought on the presumption that a constitutional amendment is needed in order to change the effect of the U.S. Supreme Court decision. In most cases, however, the only people who favor such delays are those who are already entrenched in office and are now at the very last moment grasping for a political stall in order to save their jobs.

I hope that the Senate will not be deceived. I believe that we are involved in a struggle which may ultimately determine whether or not we are a government of the people, by the people, and for the people.

Very truly yours,

DAVID FRIEDLAND.

I have received the following letter from Mr. Upton Sisson, of Gulfport, Miss., who has been active in the reapportionment efforts in that State:

AUGUST 27, 1964.

Senator PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR HART: I am in receipt of a letter from Mr. William J. D. Boyd of the National Municipal League in New York City requesting that I furnish to you any statements or speeches which I have made in connection with legislative reapportionment.

While I have made many speeches on the subject of legislative reapportionment, I have no written copies of the same. I was attorney for the complainants in a suit filed in the chancery court of this State styled *Marvin Fortner, et al.* v. *Ross Barnett, et al.* In my

final argument to the court in that case, I made the following statement:

"It has been said that Mississippi is unfair to the Negro; I say that Mississippi is not even fair to its own white people in the matter of legislative reapportionment."

In an amici curiae brief, which I filed in *Baker* v. *Carr*, in the U.S. Supreme Court, I made the following observations:

"Without any thought or intention to reflect, in any way, discredit of any kind upon those fine and substantial citizens who dwell in our rural areas, nevertheless the gravamen of reapportionment cases arises as a controversy, at least to a large extent, between rural and urban areas. The rural areas, on the one hand, strongly oppose their displacement in the dominant political power acquired by them through inheritance and maintained by refusal of relinquishment, while the urban areas, on the other hand, seek equal representation as a fundamental and inherent right under a republican form of government.

"Equal representation is a right under the concept of democracy as guaranteed by the Constitution of the United States, and special favor is tenable neither as a divine nor political privilege. While it is true that nature, in her partiality, designates here and there an individual as the favored recipient of her special endowments, and ordains him to a particular sphere of eminence, it is rarely that she allocates such an array of special talents within the confines of rural areas to the exclusion of urban areas, and on the whole it may be safely assumed that the destiny of the several States will be protected and preserved as well through equal representation as it will by dominant rural minority control. If we must concede preemption by rural minorities in the field of legislative representation, then under what conceiveable theory can the advocates of democracy criticize totalitarianism, and most especially today when the whole world is literally on fire?

"It is indeed a strange manifestation of equity and fairness to demand States rights on the one hand, and at the same time to deny individual rights within the State itself. Obviously these individual rights cannot be salvaged by the people through political resort to the election polls, for the apparent reason that the legislatures will not allow a referendum thereon when so to do would be tantamount to their political demise. Therefore, if relief in the matter of legislative reapportionment is denied by this Court it may not be entirely facetious to predict that some legislatures, assured of their impunity in matters violative of the U.S. Constitution, may shortly grant letters of marque and reprisal, and even perhaps enact bills of attainder against those who dare challenge their authority. And it is feared that in some areas the legislative frustration resulting from the Court's recent nullification of the doctrine of interposition will serve to increase the retaliatory proclivities of such bodies to an extent which might well endanger the enactment of sane legislation, but which condition could, and would, be greatly diluted, if not entirely dissipated upon reapportionment.

"If the purposes of a State constitution are to be effectuated, the popular representation provisions of that instrument must be honored.

"Noncompliance defeats the purpose of the Constitution itself. The judicial role in the problem is one of holding government to its constitutional course.

"A failure to secure compliance with the constitutional mandate regularly to reapportion is not merely a matter of a legislative duty left undone; it is a failure to secure for the people such government as our Constitution assures them they shall have. Where the legislative branch has failed to meet so fundamental a duty, the judicial branch should then act to uphold the Constitution. The policies underlying the structure of the government and the distribution of its powers, are not frustrated but rather are fulfilled by such judicial action."

If you desire to use these statements in connection with your opposition to pending legislation designed to set aside holdings by our U.S. Supreme Court in the matter of reapportionment, you have my permission to do so.

I am also enclosing herewith copy of a letter which I have this day written to Congressman WILLIAM COLMER from the Fifth Congressional District of Mississippi.

Trusting that you will be successful in your endeavor to prevent legislation which would in any way disturb the U.S. Supreme Court holdings on reapportionment, and with kindest regards, I am

Sincerely yours,

UPTON SISSON.

Following is a letter from Mr. Forest Frank, executive director, of the City Charter Committee, Cincinnati, Ohio, and a statement representing the position of that organization in opposition to the measures now pending before the Congress:

CITY CHARTER COMMITTEE,
Cincinnati, Ohio, August 27, 1964.

Senator PHILIP A. HART,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: Because of your expressed interest in the problem presented by current proposals to curb the authority of the Federal courts in reviewing protests against legislative malapportionment, I am enclosing herewith a brief statement of the position of the city charter committee, of which I am executive director.

The city charter committee through its officers was the plaintiff in one of the suits before the Supreme Court, which precipitated the recent wave of criticism against the Court. Membership in the city charter committee is composed of Republicans, Democrats, and independents and is numbered in the thousands. We appeal to you to support our position that the Federal courts must be permitted to retain jurisdiction in these matters and to oppose the current attacks being made on that position.

Respectfully,

FOREST FRANK,
Executive Director.

STATEMENT OF CITY CHARTER COMMITTEE, CINCINNATI, OHIO

Critcs of the one-man, one-vote principle underlying recent court decisions in the field of legislative apportionment profess to find little or no connection between the plight of urban areas and the unfair distribution of seats in our State legislatures.

How much actual firsthand knowledge these critics have of either subject, urban problems or legislative malapportionment, is debatable. As an organization with a 40-year history of effort to improve local government the city charter committee, however, speaks with considerable experience. And it is our view that legislative malapportionment is one of the major reasons the city of Cincinnati and Hamilton County, Ohio, today are hamstrung in meeting both current fiscal needs and the greater fiscal problems involved in trying to do justice to human needs of the community.

Such matters as long overdue reorganization of county government, home rule in taxation, annexation, distribution of State-collected taxes originally earmarked for local government, matching funds for relief, aid to dependent children, maintenance of through highways—these are only a beginning of the long list of items in pursuit of which Cincinnati and Hamilton County along with other major Ohio urban areas are periodically frustrated by the Ohio General Assembly. The root of the frustration is the Hanna amendment to the Ohio constitution of 1903—an amendment proposed and adopted for purely political motives—by which Vinton County with barely 10,000 population has the same voice in the House of Representatives of Ohio as Lake County with 150,000 population.

Ohio has 88 counties; its urban population is centered in 16 of these and chiefly in 8 of the 16. The early apportionment provisions of the Ohio constitution (written and adopted in 1851) were reasonable and based largely on a requirement of the original Northwest Territory Act making equality of representation mandatory.

The Hanna amendment by guaranteeing every county one seat in the house of representatives gravely distorted this original plan of apportionment. The distortion has become acute since 1920 until now counties having less than 30 percent of the population of the State are in complete control of the house of representatives. The number of counties which owe their disproportionate influence in the house to the Hanna amendment has grown from 8 in 1910 to 40 in 1920 and 48 in 1964. Contrary to the arguments of the present critics of the Federal court rulings in this area, it was clearly not the intention of Ohio voters in 1851 to guarantee every Ohio county its own representative. In 1851, 13 of the 88 counties lacked the one-half quota of population required to qualify for a seat in the legislature. As a result, the 13 were joined to neighboring counties for the election of representatives. In short, it is apparent that framers of the Ohio constitution in 1851 felt they had gone far enough when they conferred a separate seat on counties possessing only one-half of the normal quota for representation. And it is this position that the Supreme Court in effect has upheld by its decision in our suit requesting repeal of the Hanna amendment.

The representatives of the rural counties of Ohio have repeatedly been asked to permit Ohio citizens to vote on the subject of retention or repeal of the Hanna amendment—and each time they have turned the request down. There is a provision in the Ohio constitution for initiative in these matters—but the terms of the provision are such that without at least token support from a few rural counties, it is impossible to bring the matter on the ballot by initiative petition. Needless to say, no such support is available.

Under the circumstances it is inconceivable that Congress should permit political considerations to undermine the position of the cities of Ohio further—or for that matter the cities of other States discriminated against in this respect.

The city charter committee representing thousands of citizens of both political parties, Republicans and Democrats, as well as independents of neither party affiliation, earnestly urges the Members of Congress to be wary of the unjust position into which they are being persuaded by critics of the Federal courts. In the case of Ohio, the Federal courts have not tried to tell Ohio legislators or Ohio officials how they shall proceed in the business of equitable apportionment. They have merely laid down guidelines that a fair apportionment process should take into consideration. Congress can hardly improve on their handiwork.

REPUBLICAN VICE-PRESIDENTIAL NOMINEE MAKES FALSE CHARGES ON IMMIGRATION REFORM AND ASYLUM FOR REFUGEES FROM COMMUNIST TYRANNY

Mr. HART. Mr. President, most of the problems which concern the electorate of this country and make up the